IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

Crl.MC.No. 2155 of 2007()

L.P. 108/06 IN CP.255/2005 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOTTARAKKARA

.....

PETITIONER: ACCUSED NO.1

AJAYAKUMAR @ AMBILY, S/O.SIVADASAN,
KAMALA NIVAS, POOVATTOOR EAST MURI,
KULAKKADA, KALAYAPURAM VILLAGE.

BY ADV. SRI.ALEXANDER GEORGE

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY ITS
DIRECTOR OF PUBLIC PROSECUTION,
HIGH COURT OF KERALA, ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE,
KOTTARAKARA POLICE STATION,
KOTTARAKKARA.

BY PUBLIC PROSECUTOR SRI.M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2155 of 2007

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Dated this the 5th day of July, 2007

O R D E R

The petitioner is the first accused, who faces indictment in a prosecution under the Kerala Abkari Act. Investigation is complete. Cognizance has already been taken. Committal proceedings was registered in 2005. Consequent to the non-appearance of the petitioner the learned Magistrate has issued coercive processes against the petitioner and has transferred the cases to the list of long pending cases. According to the petitioner he is absolutely innocent. Her absence was not willful and deliberate.

2. The learned counsel for the petitioner submits that the petitioner is willing to appear before the learned Magistrate and apply for bail. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In the light of the dictum in **Sukumari** v. **State of Kerala** (2001 (1) KLT 22), it is prayed that appropriate directions may be issued to release the petitioner on bail on the date of surrender itself.

3. I find no reason to invoke the jurisdiction under Section 482 Cr.P.C. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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